IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

OP.No. 9844 of 1998(V)

PETITIONER:

U.KANDRU, RANGE OFFICER (RETIRED)
LAKSHMI NIVAS, MADAMBI LANE, THRISSUR 4.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENTS:

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1. **STATE OF KERALA, REP.BY ITS FOREST SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.**
2. **PRINCIPALCHIEF CONSERVATOR OF FORESTS, THIRUVANANTHAPURAM.**
3. **THE DIVISIONAL FOREST OFFICER, DIVISIONAL FOREST, OFFICE, THRISSUR DIVISION, THRISSUR.**
4. **THE DIVISIONAL FOREST OFFICER, DIVISIONAL FOREST OFFICE, VAZHACHAL DIVISION, CHALAKKUDY.**
5. **THE DIVISIONAL FOREST OFFICER, DIVISIONAL FOREST OFFICE, PARAMBIKKULAM DIVISION, VIA POLLACHI.**
6. **THE DISTRICT COLLECTOR, COLLECTORATE, THRISSUR.**
7. **THE TAHSILDAR, TALUK OFFICE, TRICHUR.**
8. **THE DEPUTY TAHSILDAR (R.R.) TRICHUR 20.**

BY GOVERNMENT PLEADER SRI.SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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O.P.No.9844 of 1998

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Dated this the 23rd day of January, 2007

J U D G M E N T

In this original petition the petitioner, a retired Government servant challenges Exts.P7, P8, P9, P10, P11, P12, P13, P14 and P15 by which liability has been fixed on the petitioner to the tune of Rs.1,11,064/- for recovery from her DCRG. The contention of the petitioner is that no liability was fixed on the petitioner with notice to him within three years from the date of his retirement as provided under Note 3 to Rule 3 of Part III of the Kerala Service Rules and therefore no liability can be now recovered form his DCRG. The matter was heard some time back on several days. On 25.11.2005 I passed the following order;

> "This O.P. came up for hearing before me on 23.11.05. On that day, counsel for the petitioner was ready with the case. However, the learned Govt. Pleader sought time till 24.11.2005. On 24.11.2005 also when the matter was taken up, learned Govt. Pleader again

> sought for further time to today. When the matter was taken up today, and argued at some length, the learned Govt. Pleader again sought for time to produce documents from the records. I see that the respondents have filed originally two statements and thereafter a counter affidavit, none of which contain the necessary documents to prove that the petitioner was served with an order quantifying his liability within three years of his date of retirement. Still the Govt. Pleader seeks further time. Although, I am not satisfied with the reasons for adjournment, as a last chance, I am posting this O.P. for hearing to 29.11.2005. On that day, the Govt. Pleader shall be positively ready with all materials for arguing the case."

Subsequently a statement dated 6.12.2005 has been filed by the Divisional Forest Officer, Vazhachal. That also does not contain any document whatsoever which would go to prove that the fixation of liability on the petitioner with notice to him had been done within three years from the date of retirement of the petitioner. When the petitioner categorically states in the original petition that there was no process of fixation of liability with notice to him within three years of his date of retirement, the onus of proving otherwise was on the respondents by producing documents to prove the same. In the absence of any documents to prove the same, I am inclined to accept the averments of the

petitioner to the effect that the liability has not been fixed with notice to the petitioner within three years from the date of the petitioner's retirement. That being so, no liability could be recovered from the petitioner's retirement benefits on the basis of the so-called liability in view of Note 3 of Rule 3 of Part III of KSR. In the above circumstances, the impugned orders are set aside and the respondents are directed to disburse all balance retirement benefits due to the petitioner within two months from the date of receipt of a copy of this judgment.

The original petition is allowed as above.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.9844 of 1998

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J U D G M E N T

23rd January, 2007